

### **REMARKS**

Applicant respectfully requests reconsideration and allowance of the subject Application.

#### **37 CFR §1.131 Affidavit of Ramachandran Ramjee**

Applicant respectfully requests that the affidavit of Mr. Ramachandran Ramjee, submitted herewith pursuant to Rule 131 and attached hereto, be admitted to show prior date of invention.

Applicant submits herewith a declaration under 37 CFR §1.131 and supporting documentation to evidence that the invention was conceived in the United States prior to the May 12, 1998 filing date of U.S. Patent No. 6,473,411, issued to Kumaki (hereinafter "Kumaki"). Accordingly, the Kumaki reference should be removed as a reference because it is not prior art.

When any claim of an application is rejected, a qualified party may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference on which the rejection is based. 37 CFR 1.131. An affidavit showing prior invention may be timely presented after final rejection in certain cases. MPEP 715.09.

In the present application, prosecution was transferred from one law firm to another; therefore, prosecution was not within the control of one entity for the length of prosecution. A new power of attorney was executed on July 12, 2005 to the undersigned law firm. At this time, the application was under final rejection. As prosecution proceeded with an RCE numerous attempts were made to contact inventors in the application, however, several had left employment with

Lucent Technologies (assignee of application No. 09/210,213) until contact was made with Mr. Ramachandran Ramjee, one of the co-inventors. Upon discussions of the invention it became apparent that the invention was actually conceived of prior to the cited reference's filing date; furthermore, Mr. Ramjee had evidence of the continued diligence of the inventors until a time prior to the filing of the present application. Thus, a more timely affidavit concerning prior invention was not possible in this case and Applicant respectfully requests that the attached affidavit be admitted as timely presented as allowed for under MPEP 715.09.

The attached affidavit seeks to demonstrate the following: that the invention was conceived of prior to the effective date of the cited reference coupled with diligence from a time prior to the prior art date of the cited reference to a subsequent filing of the application. The affidavit includes, as exhibits, personal notes, computer files and text documents showing conception of the invention and diligence prior to filing of the application.

Evidence in support of an earlier date of conception than the Kumaki reference is submitted herewith and includes the following exhibits:

- Exhibit 1 is a computer file directory showing dates of origination of files that demonstrate conception of the invention and continued diligence prior to the filing of U.S. Patent Application NO. 09/210,213.
- Exhibit 2 is a personal notebook file of inventor, Ramachandran Ramjee, demonstrating a high-level overview of the invention disclosed in U.S. Patent Application No. 09/210,213.

- Exhibit 3 is a copy of a computer file (Hawaii.1) dated March 9, 1998 to demonstrate a conception date prior to the Kumaki reference.
- Exhibit 4 is a computer file (Hawaii\_mob.1) dated April 30, 1998 to demonstrate a conception date prior to the Kumaki reference.
- Exhibit 5 is a computer file (Hawaii\_mob.2) dated May 6, 1998 to demonstrate a conception date prior to the Kumaki reference.
- Exhibit 6 is a personal notebook file of inventor, Ramachandran Ramjee, dated May 10, 1998 demonstrating conception of the invention disclosed in U.S. Patent Application No. 09/210,213 prior to that of the Kumaki reference.
- Exhibit 7 is a draft of a manuscript (computer file Hawaii.tex) dated October 29, 1998, entitled Hawaii: a domain based approach for supporting mobility in wide-area wireless networks – and demonstrates continued diligence prior to the time of filing U.S. Patent Application No. 09/210,213.

Based on the foregoing evidence and affidavit, it is respectfully asserted that Applicant had possession of the claimed invention prior to May 12, 1998, and is therefore able to swear behind the reference (Kumaki) cited in the rejection.

### **35 U.S.C. § 103 Claim Rejection**

Claims 1-3, 5, 6, 8, 9, and 12-20 & 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,473,411 B1 issued to Kumaki et al. (hereinafter, "Kumaki"). In view of the §131 Affidavit declaring an earlier date of invention, Kumaki is removed as prior art. Applicant respectfully requests withdrawal of the § 103 rejection.

## **Conclusion**

In view of the foregoing amendments, remarks, and affidavit, Applicant submits that claims 1-3 and 5-21 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. If any issues remain that preclude issuance of this application, the Office is urged to contact the undersigned attorney before issuing a subsequent Action.

Respectfully Submitted,

**Werner & Axenfeld, P.C.**

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